

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on Universal |) | CC Docket No. 96-45 |
| Service | | |

COMMENTS OF GVNW CONSULTING, INC.

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Summary of Comments

Many carriers applying for ETC status already provide service to customers within the study area for which they seek ETC designation. The customers were obtained under business plans that did not anticipate or require explicit support. When such a carrier is granted ETC status, however, they often request funding for all of the existing customer lines. This results in an immediate and significant increase in the size of the fund for little tangible near-term benefit.

The overarching principle that the Joint Board and Commission must adhere to is that rate-of-return carriers are entitled, as a matter of law, to a FULL recovery of their costs in providing interstate services. One of the key components of this cost recovery is the revenue received from federal universal service fund (USF) support. Federal USF is a cost recovery mechanism for rural carriers.

The Commission should adopt mandatory standards that require a review that meets the test of being a rigorous, fact-intensive, cost-based analysis. It should be clearly stated that the benefits must outweigh the costs in order to consider granting of CETC status. The Commission should consider providing guidance on quality of service standards applicable to competitive eligible telecommunications carriers. Another important aspect of any public interest test is that the Commission should adopt the creamskimming standards set forth in the Highland Cellular Order as the national benchmark. In Highland Cellular, the public interest test set forth was that the smallest geographic area of service that is appropriate for a competitor to a rural telephone company is the wire center.

Introduction and Background

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory support on issues such as universal service, advanced services, and access charge reform for communications carriers in rural America. We are pleased that the Commission has requested comments and replies on these critical issues.

The purpose of these comments is to respond to the Commission's Notice of Proposed Rulemaking that was issued as FCC 04-127. In this instant NPRM, the Commission has requested comments on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board).¹ In particular, the Commission asked for comments reviewing the support (or lack thereof) for second lines.² The Commission also asked for comments on the Joint Board recommendations to examine the process for designating ETCs.³

¹ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, released February 28, 2004.

² *Id.*

³ *Id.*

GENERAL ISSUES

As a preface to specific comments on the various federal universal service support issues raised by the Commission, it is appropriate to examine one foundational issue:

What was the congressional intent with respect to implementing the universal service provisions of the Telecommunications Act of 1996?

What did Congress intend to happen?

In the event that the objectives of competition and universal service cannot be reconciled, universal service must take precedence over competition. Senator Byron Dorgan, who introduced the amendment to the 1996 Act that requires a public interest finding before designating a second ETC in a rural area, said in part⁴:

The protection of universal service is the most important provision in this legislation. S.652 contains provisions that make it clear that universal service must be maintained and that citizens in rural areas deserve the same benefits and access to high quality telecommunications services as everyone else. This legislation also contains provisions that will ensure that competition in rural areas will be deployed carefully and thoughtfully, ensuring that competition benefits consumers rather than hurts them. Under this legislation, the State will retain the authority to control the introduction of competition in rural areas and, with the FCC, retain the responsibility to ensure that competition is promoted in a manner that will advance the availability of high quality telecommunications services in rural areas.

⁴ Congressional Record of June 8, 1995, S 7951-2. Senator John F. Kerry of Massachusetts corroborates this view by stating: "The conference report also maintains universal service as a cornerstone of our Nation's communications system." 142 Cong. Rec. S687, S710. In addition, Senator Ernest Hollings of South Carolina (D-SC) stated: "The need to protect and advance universal service is one of the fundamental concerns of the conferees in drafting this conference agreement." 142 Cong. Rec. S687, S688.

STATE OF THE MARKETPLACE AND UNIVERSAL SERVICE FUND

Growth of Fund

An important public policy question is to what extent CETC support will increase over time. In his article, USF Portability – Getting it Right,⁵ Mr. Glenn Brown details several reasons why the size of the USF is expanding so rapidly. He states:

Many carriers applying for ETC status already provide service to customers within the study area for which they seek ETC designation. The customers were obtained under business plans that did not anticipate or require explicit support. When such a carrier is granted ETC status, however, they often request funding for all of the existing customer lines. This results in an immediate and significant increase in the size of the fund for little tangible near-term benefit.

Wireless Substitution

Another relevant issue is posed as “to what extent does wireless or other technology represent the addition of complementary service rather than substitution for traditional wireline in rural and high-cost areas?”

An observation with respect to this question is found in the testimony given during the April 2, 2003 hearing before the Subcommittee on Communications of the Senate Committee on Commerce, Science, and Technology. In his prepared remarks, Dr. Bill Gillis⁶ addressed the flawed assumption in recent ETC decisions that wireline and wireless services are substitutes.

⁵ Glenn Brown, “USF Portability – Getting it Right,” Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) Newsletter, *The Advocate* (September 2002).

⁶ Director of the Center to Bridge the Digital Divide, Washington State University, former WUTC Commissioner, former Chair of the Rural Task Force.

I would suggest reframing the issue in a different context. First, I would observe mobile wireless and traditional telecommunications are not for the most part competing services and have been inappropriately characterized as such. With the exception of those cases where mobile wireless has resulted in the ability of customers to eliminate their traditional telecommunications connection, we are discussing complementary services, both desired by consumers for different reasons.

Further evidence with respect to the complementary nature of wireless service may be found in a recent statement made by Western Wireless in the Commission proceeding that addressed spectrum-based services.⁷

The Commission should be careful to avoid falling into the trap of thinking that the only wireless/wireline competition that matters is when wireless service completely displaces wireline service, i.e., either when customers drop their wireline service and use wireless as their only phones, or when customers who never had phone service sign up for wireless instead of wireline. Wireless/wireline competition is fueled by consumers' use of wireless not only as a *substitute* for wireline . . . but also as a *complement* to wireline. (*emphasis in original*)

METHODOLOGY FOR CALCULATING SUPPORT IN COMPETITIVE STUDY AREAS

Recognizing the increasing support received by competitive carriers, the following questions are germane concerning competitive entry and portability of support.

Portable Support

Two threshold issues concern whether supporting multiple ETCs results in inefficient competition and whether current rules promote competitive neutrality. Wireless carriers seek USF support for a variety of reasons, with one of the more obvious being that it is allowed under current rules⁸

⁷ Comments of Western Wireless Corporation, WT Docket No. 02-381, February 3, 2003, page 23.

⁸ “... not doing so would be like leaving a \$100 bill on the ground.” Bear Sterns Equity Research, Wireline Services: The USF Primer, March 2003, page 17.

In attempting to answer the question as to whether the current rules are competitively neutral, it can be instructive to view what an unbiased third party observer has to offer on the topic. In this vein, we again cite from the March 2003 Bear Stearns USF Primer⁹:

Double (Higher) Standards. CETCs may receive the same USF support, but are not held up to the same requirements or service standards as the incumbent carriers, which also serve as the Carrier of Last Resort (COLR) in rural areas. For example, wireless carriers are not required to support E911 services, provide access to a variety of long distance carriers, or publish directories. In addition, dropped calls, spotty coverage, and call delays are still tolerated from wireless carriers.

Mobile Wireless Location Issues

The current rule allowing the billing address to determine the location should be replaced with the use of an actual residential or business address. If such an address is not available, then the customer should be considered to be located in the zone with the lowest per line support. Such a change could serve to ameliorate the current abuse of the system in which a wireless carrier establishes a billing presence where the largest amount of high-cost support is available, even if this is not where the customer lives or even uses the service.

SCOPE OF SUPPORT

Under the scope of support section, the issue of whether to provide federal universal service support to only primary lines is addressed. We will address the issues concomitant to this topic in a consolidated fashion.

⁹ Ibid, page 18.

The overarching principle that the Joint Board and Commission must adhere to is that rate-of-return carriers are entitled, as a matter of law, to a **FULL** recovery of their costs in providing interstate services. One of the key components of this cost recovery is the revenue received from federal universal service fund (USF) support. Federal USF is an interstate **cost** recovery approach for rural carriers¹⁰.

The Commission itself has recognized that the costs of rural carriers are higher than non-rural carriers. This was demonstrated empirically in the Rural Task Force's White Paper 2¹¹, and this research was corroborated in NECA's *Trends in Telecommunications Cost Recovery: The Impact on Rural America* report released in October, 2002.

The Commission previously rejected limiting support to primary lines

Previously, the Commission rejected a Joint Board recommendation to limit support to primary lines. This was the right public policy decision then, and remains so today. One of the major concerns raised by the Commission at that time was the administration issue related to such a policy change. The same concerns remain, and have actually become more problematic in the current environment.

¹⁰ See, for example, OPASTCO's Universal Service in Rural America: A Congressional Mandate at Risk, January 2003, page viii: "High-cost universal service support is not a subsidy program for end-user customers. It is a cost recovery program designed to promote infrastructure investment in areas where it would not otherwise be feasible for carriers to provide quality services at rates that are affordable and reasonably comparable to urban areas".

¹¹ "The Rural Difference", Rural Task Force White Paper 2, released January 2000.

The same issues remain problematic today

There is a myriad of issues surrounding a proposed transition to providing support to only primary lines. The questions include, but are not necessarily limited to the following:

Basic Definitional Issues – What is a primary line?

It would be necessary to establish clear-cut, easy to understand rules with respect to what constitutes a primary line eligible for federal universal service support.

Questions in this regard include:

- Is the primary line:
 - The first line to an address?
 - The line that has the most usage at an address?
 - Is the definition of primary line limited to residential and single-line business?
 - Is a post office box or mail drop an acceptable “address”?

“Who designates” Issues

One obvious question that occurs in light of a proposed transition to the provision of federal universal service support on a primary line basis is which party will make the determination. For instance:

- Can the customer designate which of their lines is primary?
- Can the customer designate more than one line as being primary in certain circumstances?
- Can a customer designate more than one line if each of the designated lines are provided by a different carrier?
- If multiple families live at one address, will each family be able to designate a primary line?
- If a single family has separate phones for different family members, can each family member have a primary line? If not, who has the authority to determine which is primary and which is not? Do such distinctions depend on whether the lines are billed to the same subscriber name on a common bill or to different subscriber names on separate bills?

- If a person has a phone, but no address, can the phone be considered primary?

Dispute Resolution

- How will information needed to administer this distinction be gathered?
- Will each carrier be required to supply other carriers the specific information about each customer?
- Will each carrier have to obtain information from the customer as to what services he is obtaining from other carriers?
- Will the FCC require that a clearing house be instituted that will gather all of the pertinent information from all customers and carriers, and then share it with each carrier as needed to make the determination?
- Who will monitor/police this process?

PROCESS FOR DESIGNATING ETCs

Prior to reviewing what standards should be utilized in designating ETCs, it is useful to review the statutory standard shown below¹²:

Upon request and consistent with the public interest, convenience, and necessity, the State commission **may**, in the case of an area served by a rural telephone company, and **shall**, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

It would appear that in some cases states have confused the “**shall**” applicable to non-rural areas with the “**may**” designation that is intended to be applied to an analysis of a request for multiple ETCs in a rural study area. The recent Virginia Cellular Order¹³

¹² 47 U.S.C. § 214(e)(2) (emphasis added).

¹³ In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004).

(VCO) and Highland Cellular Order¹⁴ (HCO) have each provided a step in the right direction for ETC designation.

Factors the Commission should consider regarding ETC designations

In these Orders, the Commission has moved toward articulating a proper interpretation of congressional intent for universal service by supporting the need for something more than a vague assertion of intent on the part of the carrier seeking ETC designation.

The Commission should adopt mandatory standards that require a review that meets the test of being a rigorous, fact-intensive, cost-based analysis. It should be clearly stated that the benefits must outweigh the costs in order to consider granting of CETC status. The Commission should consider providing guidance on quality of service standards applicable to competitive eligible telecommunications carriers.

The Commission should adopt standards that require each applicant clearly demonstrate a commitment to serve each specific rural area with detailed build-out proposals, and not merely platitudes about what it might do at some future point in time.

Further, the Commission should require that any ETC designation review include consideration of the financial capabilities of the applicant, as well as its ability to respond appropriately in the case of an emergency.

¹⁴ In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. April 12, 2004).

Public Interest Tests

The purpose of what the legislation attempts to accomplish with specific consideration of rural differences is relevant with respect to ETC designation issues.

The intent of Congress was that each rural area affected be considered on its own merits. Thus, it should be mandatory that each ETC designation review address the issues on a company by company basis.

Another important aspect of any public interest test is that the Commission should adopt the creamskimming standards set forth in the Highland Cellular Order as the national benchmark. In Highland Cellular, the public interest test set forth was that the smallest geographic area of service that is appropriate for a competitor to a rural telephone company is the wire center. As stated in Highland Cellular at paragraph 26: “Applications to serve only a portion of a wire center are not in the public interest.”

Respectfully submitted,

electronically submitted through ECFS

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